

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v.

UNIVERSAL HEALTH GROUP, INC.
A/K/A MICHIGAN SPINE AND REHAB,
UHG MANAGEMENT, LLC,
PROFESSIONAL HEALTH SYSTEMS,
LLC A/K/A PROFESSIONAL MEDICAL
BILLING, LLC, SCOTT P. ZACK, D.C.,
DAVID M. KATZ, D.C.,
LOREN C. CHUDLER, D.O.,
JOSEPH F. DESANTO, HORIZON
IMAGING, LLC, CLEAR IMAGING, LLC,
JEFF S. PIERCE, D.O.,
THOMAS D. CARUSO, D.O., and
KATHERINE H. KARO, D.O.,

Case No. 14-cv-10266

Hon. Judith E. Levy

Magistrate Judge
David R. Grand

Defendants.

-----X

**STATE FARM'S MOTION TO STRIKE DEFENDANTS JEFF S. PIERCE
D.O. AND THOMAS D. CARUSO, D.O.'S CONCURRENCE AND
JOINDER IN MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b) and this Court's inherent authority, Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") hereby moves to strike the Concurrence and Joinder in Motions to Dismiss Plaintiff's Complaint ("Joinder") filed by Defendants Jeff S. Pierce, D.O. ("Pierce") and Thomas D. Caruso, D.O. ("Caruso") (Dkt. No. 52). This Motion is based upon the accompanying brief, which is expressly incorporated herein.

Dated: May 16, 2014

/s/ Jared T. Heck

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Mutual Automobile Insurance
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**BRIEF IN SUPPORT OF STATE FARM'S MOTION TO STRIKE
DEFENDANTS JEFF S. PIERCE D.O. AND THOMAS D. CARUSO, D.O.'S
CONCURRENCE AND JOINDER IN MOTIONS TO DISMISS
PLAINTIFF'S COMPLAINT**

ISSUES PRESENTED

Should the Court prohibit Defendants Pierce and Caruso from joining in motions to dismiss State Farm's Complaint filed by other Defendants where Pierce and Caruso's joinder was filed weeks after they filed their Answers?

State Farm' answer: "Yes"

Pierce and Caruso's answer: "No"

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Federal Rule of Civil Procedure 12(b)

The Joinder filed by Defendants Pierce and Caruso (Dkt. No. 52) should be stricken as untimely. State Farm filed its Complaint in the instant action on January 21, 2014. (Dkt. No. 1.) On March 28, 2014, Pierce and Caruso – as well as Defendant Katherine H. Karo, D.O. – filed Answers to the Complaint. (See Dkt. Nos. 29, 30, 31.) In the weeks followed, several other co-defendants – including Defendants Scott P. Zack, D.C. (“Zack”), David M. Katz, D.C. (“Katz”), and Loren C. Chudler, D.O. (“Chudler”) – filed motions to dismiss State Farm’s Complaint. (Dkt. Nos. 45, 46; *see also* Dkt. Nos. 47, 49, 53.) On April 18, 2014, Pierce and Caruso filed their Joinder, which seeks to “concur in the relief sought by” the motions to dismiss filed by Zack, Katz, and Chudler. (Dkt. No. 52.) In other words, Pierce and Caruso seek dismissal of State Farm’s Complaint pursuant to Rule 12(b)(6) as if they had filed their own motion to dismiss.

Based on the plain language of Rule 12(b), a motion to dismiss asserting any of the defenses in subsections (1) through (7) “must be made before pleading if a responsive pleading is allowed.” Fed. R. Civ. P. 12(b). Pierce and Caruso filed their Joinder 21 days after their respective Answers were filed. The Joinder is therefore untimely under Rule 12(b) and should be stricken. *See Ohio Sav. Bank v. Manhattan Mortg. Co., Inc.*, No. 1:04-CV-128, 2005 WL 1075054, at *5 (N.D. Ohio May 5, 2005) (applying Rule 12(b) and finding defendant “foreclosed from moving to dismiss after filing his answer”).

Pursuant to Local Rule 7.1(a), State Farm has conferred with counsel for Pierce and Caruso, who oppose the relief sought herein. Accordingly, this Motion is filed as opposed.

For the foregoing reasons, State Farm respectfully requests that the Court strike Pierce and Caruso's Concurrence and Joinder as untimely under Rule 12(b).

Dated: May 16, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2014, I electronically filed the foregoing Motion and Brief with the Clerk of Court using the CM/ECF system which will send notification to all counsel of record.

By: /s/ Jared T. Heck
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